

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

John Nesse and Tim Mackey as
Trustees of the Minnesota Laborers
Health and Welfare Fund, et al.,

Civ. No 18-703 (PAM/SER)

Plaintiffs,

ORDER

v.

Lakewest Excavating LLC,

Defendant.

This matter is before the Court on Plaintiffs' Motion for Entry of Judgment. The Court held a hearing on the Motion on July 18, 2018. Christy E. Lawrie of McGrann Shea Carnival Straughn & Lamb, Chartered, appeared on behalf of Plaintiffs. There was no appearance on behalf of Defendant.

FINDINGS OF FACT

1. Plaintiffs filed the Complaint on January 24, 2018. (Docket No. 1)
2. The Complaint was served on Defendant Lakewest Excavating LLC, ("Lakewest") on January 28, 2018. (Docket No. 4)
3. Lakewest failed to file an Answer with the Clerk of Court or serve an appropriate Answer upon the Funds' counsel, and the time allowed by law for Lakewest to answer the Complaint lapsed.

4. The Clerk entered Default on February 23, 2018. (Docket Nos. 5-8)
5. Lakewest was personally served with this Motion on June 11, 2018.
6. Plaintiffs are Trustees and fiduciaries of the Minnesota Laborers Health and Welfare Fund, the Minnesota Laborers Pension Fund, the Minnesota Laborers Vacation Fund, the Construction Laborers Education, Training, and Apprenticeship Fund of Minnesota and North Dakota, and the Minnesota Laborers Employers Cooperation and Education Trust (“the Funds”).
7. The Funds are multi-employer, jointly-trusted fringe benefit plans created and maintained pursuant to Section 302(c)(5) of the Labor Management Relations Act of 1947 (“LMRA”), as amended 29 U.S.C. § 186(c)(5).
8. The Funds are administered in accordance with the provisions of the Employee Retirement Income Security Act of 1974, as amended 29 U.S.C. § 1001, et seq. (“ERISA”).
9. The Funds are exempt from federal taxation pursuant to the Internal Revenue Code.
10. Lakewest accepted and agreed to be bound to the terms of a collective bargaining agreement negotiated between the Highway Railroad and Heavy Construction Division of the Associated General Contractors of Minnesota and the Laborers District Council of Minnesota and North Dakota on behalf of its affiliated local Unions covering the period of May 5, 2014 through April 30, 2017 (“CBA”).

11. By virtue of the CBA's evergreen clause, Lakewest is bound to the CBA through at least April 30, 2018.

12. The CBA requires Lakewest to submit contributions to the Funds in an amount per hour specified in the CBA for each hour worked by its employees covered by the CBA.

13. The CBA requires Lakewest to set forth the amount due and owing for contributions on a remittance report form to be submitted to the Funds with its monthly payment.

14. The CBA requires Lakewest to submit the remittance report and payment to the Funds by the fifteenth day of the following month for which the contributions are due. Any employer whose remittance reports and contributions are not postmarked on or before the fifteenth is considered delinquent.

15. Lakewest breached the terms of the CBA by failing to timely submit the remittance reports and contributions due and owing for the period of October through December 2017.

16. Following the filing of this lawsuit, Lakewest untimely submitted its remittance reports for the period of October through December 2017. The untimely submitted reports show that Lakewest owes \$17,766.82 for unpaid contributions.

17. Additionally, the Funds reasonably believe that Lakewest continued to employ individuals during the period of January 2018 through April 2018 for which contributions may be due and owing.

18. Without the remittance reports, the Funds have no way of determining the amounts due and owing to the Funds for unpaid contributions for the period of January 2018 through April 2018.

19. The CBA provides that if a payment for contributions is not submitted to the Funds on or before the fifteenth day of the month following the month for which the contributions are due, the employer is subject to a penalty in the amount of ten percent of the contributions as liquidated damages.

20. Liquidated damages in the amount of \$1,776.68 are due and owing for the period of October through December 2017.

21. Liquidated damages for the period of January 2018 through April 2018 cannot be determined until the relevant remittance reports are submitted by Lakewest.

22. The CBA further provide that a delinquent employer shall be required to pay all reasonable attorneys' fees and court costs incurred by the Funds.

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CONCLUSIONS OF LAW

1. Lakewest is in default and the Funds are entitled to entry of judgment.
2. Lakewest is liable to the Funds in the amount of \$17,766.82 for unpaid contributions for the period of October through December 2017.
3. Lakewest is liable to the Funds in the amount of \$1,776.68 for liquidated damages for the period of October through December 2017.
4. After Lakewest submits the outstanding remittance reports for the period of January 2018 through April 2018, Lakewest is liable to the Funds for all fringe benefit contributions and associated liquidated damages found to be due and owing to all the Funds.
5. Lakewest is liable, in an amount to be determined, for the Funds' reasonable attorneys' fees and costs incurred in pursuing the delinquent contributions.
6. The Funds are entitled to an Order requiring the production of the monthly remittance reports for the period of January 2018 through April 2018.

ORDER

Accordingly, **IT IS HEREBY ORDERED** that:

1. Plaintiffs' Motion (Docket No. 11) is **GRANTED**;
2. Judgment in the amount of \$19,543.50 is **ENTERED** against Lakewest Excavating LLC and in favor of Plaintiffs;

3. Defendant is **ORDERED** to submit all of its remittance reports for the period of January 2018 through April 2018;

4. Defendants must submit the required records to the Plaintiffs' third-party administrator, Zenith American Solutions, 2520 Pilot Knob Road, Mendota Heights, MN 55120, within ten (10) days of the date on which it is served with a copy of this Order;

5. Defendant is liable to the Plaintiffs for:

a. Delinquent contributions and liquidated damages due and owing for the period of January 2018 through April 2018, pursuant to the CBAs; and

b. Plaintiffs' reasonable attorneys' fees and costs incurred in pursuing delinquent contributions;

6. The Court will determine the amount of contributions, liquidated damages, and attorneys' fees and costs as follows:

a. After receiving the fringe benefit reports, Plaintiffs may file and serve a Motion for Entry of a Money Judgment in the amount Plaintiffs determine that Defendant owes for delinquent contributions and liquidated damages, as well as reasonable attorneys' fees and costs;

b. Defendants may file a response to Plaintiffs' Motion within ten (10) days of the date Plaintiffs' Motion is served; and

c. The Court will examine the parties' submissions and issue an order for judgment as the Court deems appropriate. No hearing will be held unless the Court orders otherwise.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: July 18, 2018

s/ Paul A. Magnuson

Paul A. Magnuson
United States District Court Judge